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In re Application of :
Mark Moebus : DECISION ON
Application No.: 09/890,511 :
PCT No.: PCT/EP00/01359 : PETITION
Int. Filing Date: 18 February 2000 :
Priority Date: 27 December 1999 : UNDER 37 CFR 1.181
Attorney's Docket No.: 0412-101P :
For: PANEL WITH SLIP-ON PROFILE :
:

This decision is responsive to applicants' "Petition to Withdraw Holding of Abandonment" filed 02 July 2002, which is being treated as a petition under 37 CFR 1.181 requesting that the Notification of Abandonment mailed 29 May 2002, be withdrawn because the Notification of Missing Requirements was never received.

BACKGROUND

On 18 February 2000, applicants filed international application PCT/EP00/01359, which claimed priority of an earlier European application filed 27 December 1999. A copy of the international application was transmitted on 05 July 2001 to the USPTO from the International Bureau. No DEMAND appears to have been filed for this application. Accordingly, the twenty (20) month time period for paying the basic national fee in the United States of America expired at midnight on 27 August 2001.

On 31 July 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration of the inventors accompanied the transmittal letter.

On 14 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and(b), identifying the application by International application number and international filing date" must be submitted within two months from its 14 September 2001 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 29 May 2002, a Notification of Abandonment was mailed to applicant's representative. It stated that the applicant has failed to respond to the Notification of Missing Requirements (Form PCT/DO/EO/905), mailed on 14 September 2001 within the time period set therein.

On 02 July 2002, applicants filed the instant petition.

DISCUSSION

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that "the showing required by the notice to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by practitioner and attesting to the fact that a search of the filed jacket and docket records indicate that the Office action was not received. **A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.**"

A review of the petition reveals that petitioner has not compiled with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed. Petitioner's statements on page 1, paragraphs 2 and 4 of the petition "No further communication in this matter was received by the applicant's attorneys prior to the receipt on June 11, 2002 of a "Notification of Abandonment" mailed May 29, 2002 ... no Notification of Missing Requirements was ever received, nor was a deadline for submitting the required items entered in our call-up system for 11/14/2001, as would have been expected if the Notification was actually received" by itself is insufficient to establish nonreceipt of "Notice of Missing Requirements" mailed on 14 September 2001 without any corroborating evidence , e.g., a log showing the mailed received during the time period where the nonreceipt Office action would have been entered had it been received or a tickler sheet for 14 November 2001. In other words, to establish a showing of nonreceived of the "Decision on Petition" would require, at a minimum, a copy of docket showing the replies docketed for a date of one month from the mail date of the nonreceived Office action.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned- application at this time is not appropriate.

CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The above-captioned application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



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